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10/677,905

10/02/2003

W. Frank Little

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EXAMINER

MEYERS, MATTHEW S

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/677,905	Applicant(s) LITTLE, W. FRANK	
	Examiner MATTHEW S. MEYERS	Art Unit 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6-10 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-10 and 12-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☒ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413) |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) ☐ Information Disclosure Statement(s) (PTO/SB/08) | 5) ☐ Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) ☐ Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's communication on 05/21/2008, wherein claim 15 has been newly added. Therefore claims 1, 2, 4, 6-10, and 12-15 are currently pending.

Priority

2. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on 10/02/2003 is being considered by the examiner.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/16/09 has been entered.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1, 2, 4, 6-10, and 12-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

3. In order for a method to be considered a "process" under §101, a claimed process must either: (1) tied to a particular machine or apparatus, or (2) transforms a particular article to a different state or thing. This is called the **"machine or-transformation test"**. *In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385 (Fed. Cir. 2008). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter.

4. There are two corollaries to the machine-or-transformation test. First, a mere field-of-use limitation is generally insufficient to render an otherwise ineligible method claim patent-eligible. This means the machine or transformation must impose meaningful limits on the method claim's scope to pass the test. Second, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such a data gathering or outputting, is not sufficient to pass the test.

5. With respect to claims 1, 2, 4, 6-10, and 12-15, the claim language does not include the required tie to a particular machine or apparatus or transformation and thus is directed to nonstatutory subject matter.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. **Claims 1, 2, and 4** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Fixate on Fixed Assets*, Practical Account, September 1999 (Hereinafter referred to as Practical Accountant) in view of *Uncovering Value From a Cost Segregation Study*, Mergers & Acquisitions, November/December 1995 (Hereinafter referred to as Mergers & Acquisitions).

7. With respect to **Claim 1**:

8. Practical Accountant discloses creating a project using Building Components and Architectural Elements, the Building Components defined as, at least one of, components that are inherently permanent, or components that are necessary for the

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operation or maintenance of the building, and the Architectural Elements defined as, at least one of, elements that are removable, reusable, relocatable, decorative, or supplemental (Practical Accountant, Page 1, "significant architectural costs may be, if a client is constructing property or making substantial improvements, "I would request that the architect break the fee out if there are different charges for design of land improvements (e.g., grading, layout of shrubbery, sidewalks, curbing) that would have a 15-year life versus a 39-year life. Also, architects may have in their plans, items relating to the layout of the interior for furniture and fixtures. The bill could segregate the different kinds of work such as landscaping, capital improvements to the structure, and furniture layout." Additionally, if there are improvements going forward, he indicated that they should always be investigated to see if they are integral components of the building or pieces of equipment that may be depreciated under a shorter life."), the method of creating the project comprising the steps of:

- a. determining the scope of the project such that the project can be defined (Practical Accountant, Page 1, "cost segregation analysis involves reviewing the costs incurred to acquire, construct, or improve real estate."),
- b. determining that the project is a candidate for Architectural Element coordination (Practical Accountant, Page 1, "I would request that the architect break the fee out if there are different charges for design of land improvements (e.g., grading, layout of shrubbery, sidewalks, curbing) that would have a 15-year life versus a 39-year life. Also, architects may have in their plans, items relating to the layout of the interior for furniture and fixtures. The bill could segregate the

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different kinds of work such as landscaping, capital improvements to the structure, and furniture layout."),

c. Practical Accountant discloses all the above limitations, additionally Practical Accountant discloses "cost segregation analysis involves reviewing the costs incurred to acquire, construct, or improve real estate." (Practical Accountant Page 1). Practical Accountant does not explicitly disclose coordinating the design with the Architectural Elements to make the design Architectural Element coordinated, wherein coordinating the design with the Architectural Elements includes changing one or more items of the Building Components into the Architectural Element by specifying in documentation for the design a physical change to the one or more items identified in the documentation for the design. Mergers & Acquisitions teaches specifying physical change to one or more items during a cost segregation by removing demountable wall panels and raised steel computer flooring; (Mergers & Acquisitions, Page 4) (Examiner interprets this to disclose performing a physical change to the demountable or detachable items by unmounting or detaching them.).

d. It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Practical Account with those of Mergers & Acquisitions. Practical Account describes the techniques a skilled account would use to interpret Internal Revenue Service Code such as §1245 or §1250 under the Revenue Reconciliation Act of 1993. Similarly, Mergers &

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Acquisitions teaches different techniques of exploiting other hidden revenue streams using resources which were previously overlooked by the those not skilled in the art. These untapped revenue streams are derived from tax incentives, deductions, credits, donations, or even the outright resale of these once perceived worthless, used materials. Therefore, it would have been obvious to one skilled in the art to have combined the above references at the time of the invention to have created a project using the techniques described within, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

9. With respect to **Claims 2:**

10. Practical Accountant discloses updating pricing data of the one or more items to reflect the transforming of the one or more items from the Building Components into the Architectural Elements (Practical Account, Page 1, “cost segregation analysis involves reviewing the costs incurred to acquire, construct, or improve real estate.”).

11. With respect to **Claim 4:**

12. Practical Accountant discloses coordinating updating audit data of the one or more items to reflect the changing of the one or more items from the Building Components into the Architectural Elements (Practical Account, Page 1, “cost segregation analysis involves reviewing the costs incurred to acquire, construct, or improve real estate.” and Mergers & Acquisitions, Page 4).

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13. **Claims 6-10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Practical Accountant in view Mergers & Acquisitions as applied to claims 1, 2 and 4 and further in view of *Recycled Buildings; material reuse*, Stamats Communications Inc., November, 1997 (Hereinafter referred to as Recycled Buildings).

14. With respect to **Claim 6**:

15. Practical Accountant and Mergers & Acquisitions discloses all the above limitations. Neither Practical Accountant nor Mergers & Acquisitions explicitly disclose coordinating project afterlife with at least one of the Architectural Elements and the Building Components. Recycling buildings teaches coordinating project afterlife with at least one of the Architectural Elements and the Building Components (Recycling buildings, Page 1, "Recycling buildings provides an innovative alternative to traditional demolition and removal. In terms of real estate and buildings, "recycling" takes the traditional demolition and rebuilding process to the next level where everything is approached from a reuse standpoint.").

16. It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Practical Account with those of Mergers & Acquisitions and further with Recycling Buildings. Practical Account and Mergers & Acquisitions both describe the techniques a skilled accountant or engineer would use to interpret Internal Revenue Service Code such as §1245 or §1250 under the Revenue Reconciliation Act of 1993. Similarly, Recycling Buildings teaches different techniques of exploiting other hidden revenue streams using resources which were previously overlooked by the those not skilled in the art. These untapped revenue streams are

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derived from tax incentives, deductions, credits, donations, or even the outright resale of these once perceived worthless, used materials. Therefore, it would have been obvious to one skilled in the art to have combined the above references at the time of the invention to have created a project using the techniques described within, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

17. With respect to **Claim 7:**

18. Practical Accountant and Mergers & Acquisitions discloses all the above limitations. Neither Practical Accountant nor Mergers & Acquisitions explicitly disclose coordinating afterlife further comprises one of reconfiguring, relocating, removing, and reusing the at least one of the Architectural Elements and the Building Components. Recycling buildings teaches coordinating afterlife further comprises one of reconfiguring, relocating, removing, and reusing the at least one of the Architectural Elements and the Building Components (Recycling buildings, Page 1, "Reduce, reuse, recycle. Just as the general public relates with environmental sensitivity to the recycling of aluminum cans and the daily newspaper, the buildings industry is applying such practices to its commercial facilities.").

19. With respect to **Claim 8:**

20. Practical Accountant and Mergers & Acquisitions discloses all the above limitations. Neither Practical Accountant nor Mergers & Acquisitions explicitly Recycling buildings discloses wherein the step of coordinating afterlife further comprises one of retrofitting and recycling the at least one of the Architectural Elements and Building

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Components (Recycling buildings, Page 1, "Reduce, reuse, recycle. Just as the general public relates with environmental sensitivity to the recycling of aluminum cans and the daily newspaper, the buildings industry is applying such practices to its commercial facilities.").

21. With respect to **Claim 9**:

22. Practical Accountant and Mergers & Acquisitions discloses all the above limitations. Neither Practical Accountant nor Mergers & Acquisitions explicitly disclose wherein the step of coordinating afterlife further comprises creating energy fuel from the at least one of the Architectural Elements. Recycling buildings teaches wherein the step of coordinating afterlife further comprises creating energy fuel from the at least one of the Architectural Elements (Recycling buildings, Page 1, "Reduce, reuse, recycle. Just as the general public relates with environmental sensitivity to the recycling of aluminum cans and the daily newspaper, the buildings industry is applying such practices to its commercial facilities.") (Examiner notes that it is explicit within the reference that recycling can be used for energy fuel.).

23. With respect to **Claim 10**:

24. Practical Accountant and Mergers & Acquisitions discloses all the above limitations. Neither Practical Accountant nor Mergers & Acquisitions explicitly discloses wherein the step of coordinating afterlife comprises the steps of (a) one of reconfiguring, relocating, removing and reusing the at least one of the Architectural Elements , (b) one of retrofitting and recycling the at least one of the Architectural Elements , and (c) creating energy fuel from the at least one of the Architectural Elements. Recycling

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buildings teaches wherein the step of coordinating afterlife comprises the steps of (a) one of reconfiguring, relocating, removing and reusing the at least one of the Architectural Elements , (b) one of retrofitting and recycling the at least one of the Architectural Elements , and (c) creating energy fuel from the at least one of the Architectural Elements (Recycling buildings, Page 1, "Reduce, reuse, recycle. Just as the general public relates with environmental sensitivity to the recycling of aluminum cans and the daily newspaper, the buildings industry is applying such practices to its commercial facilities." and Recycled Buildings, Pages 1-2, "The recycling process can be applied to virtually any building, making way for a much more energy-efficient and environmentally conscious facility in its place. All aspects of the process, from the demolition to the rebuilding, have the opportunity to benefit the health of the planet - fewer raw materials are needed and deposits to landfills are de-creased. The new facility is then able to employ the latest in energy-saving, state-of-the-art technology, while taking advantage of some of the resources the old building left behind. Clearly, on the basis of environmental impact, recycling buildings makes sense. Financially, recycling a building costs no more than traditional take-down-and-rebuild projects. In fact, building recycling can ultimately save time and money for developers and builders. In all of these ways, building recycling provides economic advantages that complement its environmental benefits and magnify its overall value as a viable development alternative that helps take the construction process into the next millennium.").

25. **Claim 15** is rejected under 35 U.S.C. 103(a) as being unpatentable over Practical Accountant in view of Mergers & Acquisitions, and in view of Recycled

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Buildings as applied to claims 1, 2, 4, and 6-10 above and further in view of *Reduce corporate taxes by optimizing depreciation*, Transactions of AACE International, 1997 (Hereinafter referred to as AACE)

26. With respect to **Claim 15**:

27. Practical Account, Mergers & Acquisitions and Recycled Buildings disclose all the above limitations. Additionally, Practical Accountant discloses a cost segregation analysis which involves reviewing the costs incurred to acquire, construct, or improve real estate. It identifies the specific types of assets placed in service "and hopefully leads to a cost allocation that assigns part of the cost to personal property [with shorter lives]." (Practical Accountant, Page 1), but does not explicitly disclose if the project is not a candidate for Architectural Elements coordination, then the steps: identifying the Building Components for the scope of the defined project, and implementing the identified Building Components for constructing the project. However, Recycled Buildings teaches providing an innovative alternative to traditional demolition and removal. In terms of real estate and buildings, "recycling" takes the traditional demolition and rebuilding process to the next level where everything is approached from a reuse standpoint (Recycled Buildings, Page 1) .

28. Neither Practical Accountant nor Mergers & Acquisitions nor Recycled Building explicitly disclose when the design is Architectural Element coordinated, then the steps: identifying the Architectural Elements for the scope of the project, identifying the Building Components for the scope of the project, and implementing the Architectural Elements and Building Components that have been identified to create the project,

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wherein the transforming occurs prior to the implementing such that the one or more items are already transformed from the Building Components into the Architectural Element upon creating the project. However, AACE teaches, "In order to quantify these costs, the technical analyst would review the construction blueprints, determine the material types and quantities, and then estimate the associated costs." (AACE, Page 2).

29. It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Practical Account and Mergers & Acquisitions with those of Recycled Buildings and further with the teachings of AACE. AACE, Practical Account and Mergers & Acquisitions describe the techniques a skilled accountant or engineer would use to interpret Internal Revenue Service Code such as §1245 or §1250 under the Revenue Reconciliation Act of 1993. Similarly, Recycled Buildings teaches different techniques of exploiting other hidden revenue streams using resources which were previously overlooked by the those not skilled in the art. These untapped revenue streams are derived from tax incentives, deductions, credits, donations, or even the outright resale of these once perceived worthless, used materials. Therefore, it would have been obvious to one skilled in the art to have combined the above references at the time of the invention to have created a project using the techniques described within, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

30. **Claims 12-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Practical Accountant in view Mergers & Acquisitions, and further in view of AACE.

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31. With respect to **Claim 12**:

32. Practical Accountant discloses a method of creating a project using Building Components and Architectural Elements, the Building Components defined as, at least one of, components that are inherently permanent, or components that are necessary for the operation or maintenance of the project, and the Architectural Elements defined as, at least one of, elements that are removable, reusable, relocatable, decorative, or supplemental (Practical Accountant, Page 1, "significant architectural costs may be, if a client is constructing property or making substantial improvements, "I would request that the architect break the fee out if there are different charges for design of land improvements (e.g., grading, layout of shrubbery, sidewalks, curbing) that would have a 15-year life versus a 39-year life. Also, architects may have in their plans, items relating to the layout of the interior for furniture and fixtures. The bill could segregate the different kinds of work such as landscaping, capital improvements to the structure, and furniture layout." Additionally, if there are improvements going forward, he indicated that they should always be investigated to see if they are integral components of the building or pieces of equipment that may be depreciated under a shorter life."), the method of creating the project comprising:

- e. providing documentation for implementation of the project (Practical Accountant, Page 1, "I would request that the architect break the fee out if there are different charges for design of land improvements (e.g., grading, layout of shrubbery, sidewalks, curbing) that would have a 15-year life versus a 39-year life. Also, architects may have in their plans, items relating to the layout of the

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interior for furniture and fixtures. The bill could segregate the different kinds of work such as landscaping, capital improvements to the structure, and furniture layout.");

f. Practical Accountant discloses all the above limitations, additionally Practical Accountant discloses "cost segregation analysis involves reviewing the costs incurred to acquire, construct, or improve real estate." (Practical Accountant Page 1). Practical Accountant does not explicitly disclose changing one or more items of the Building Components into the Architectural Element by specifying in documentation for the design a physical change to the one or more items identified in the documentation for the design. Mergers & Acquisitions teaches specifying physical change to one or more items during a cost segregation by removing demountable wall panels and raised steel computer flooring; (Mergers & Acquisitions, Page 4) (Examiner interprets this to disclose performing a physical change to the demountable or detachable items by unmounting or detaching them.).

g. Additionally, Practical Accountant does not explicitly discloses implementing the project to create the project, wherein the changing occurs prior to implementing the project such that the one or more items are already transformed from the Building Components into the Architectural Elements upon the implementation of the project. However, AACE teaches, "In order to quantify these costs, the technical analyst would review the construction blueprints,

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determine the material types and quantities, and then estimate the associated costs.” (AACE, Page 2).

h. It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Practical Account with those of Mergers & Acquisitions and further with AACE. AACE, Practical Account and Mergers & Acquisitions all describe the techniques a skilled accountant or engineer would use to interpret Internal Revenue Service Code such as §1245 or §1250 under the Revenue Reconciliation Act of 1993 to exploit hidden revenue streams using resources which were previously overlooked by the those not skilled in the art. These untapped revenue streams are derived from tax incentives, deductions, credits, donations, or even the outright resale of these once perceived worthless, used materials. Therefore, it would have been obvious to one skilled in the art to have combined the above references at the time of the invention to have created a project using the techniques described within, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

33. With respect to **Claims 13 and 14**:

34. Practical Accountant discloses wherein the project is a building or product (Practical Account, Page 1, “cost segregation analysis involves reviewing the costs incurred to acquire, construct, or improve real estate.”).

Response to Arguments

1. Applicant's arguments filed 1/16/2009 have been fully considered but they are not persuasive.
2. With respect to applicant's argument that neither Practical Accountant nor AACE references teaches changing one physical asset to another type of asset. Mergers & Acquisitions discloses physically changing an asset to another asset during a cost segregation project by removing demountable wall panels and raised steel computer flooring (Mergers & Acquisitions, Page 4). Examiner interprets this to disclose performing a physical change to the demountable or detachable items by unmounting or detaching them. For example, by demounting a wall or removing a raised steel computer flooring, the wall or floor has no longer become attached or a structural component. (Applicant defines a structural components as components that are inherently permanent or components that are necessary for the operation or maintenance of the building.) The component has become removed which applicant defines as removable, reusable, relocatable, decorative or supplemental. Thus, Mergers & Acquisitions meets the claimed limitation of changing an asset into a completely different asset as defined by applicant specification.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW S. MEYERS whose telephone number is (571)272-7943. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan Mooneyham can be reached on (571) 272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew S Meyers/
Examiner, Art Unit 3689

/Tan Dean D. Nguyen/
Primary Examiner, Art Unit 3689
February 10, 2009